

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES ELLIOTT,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS,

Defendant.

Case No. C06-5178 FDB

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

This matter comes before the Court on Defendant State of Washington Department of Corrections' Motion for Summary Judgment seeking dismissal of Plaintiff's claim under the American with Disabilities Act (ADA) 42 U.S.C. § 1201 *et seq.* After reviewing all materials submitted by the parties and relied upon for authority, the Court is fully informed and hereby grants summary judgment and dismisses Plaintiff's case for the reasons stated below.

INTRODUCTION AND BACKGROUND

Plaintiff James Elliott is an inmate in the custody of the Washington State Department of Corrections (DOC) at the Monroe Correctional Complex. In February 2004, James Elliott plead guilty to charges of Rape of a Child in the Second Degree and Child Molestation. Pierce County Superior Court Judge Stephanie Arend entered the Judgement and Sentence on May 18, 2004.

1 Judge Arend sentenced Mr. Elliott to the custody of the DOC for a minimum term of 131 months,
2 with a maximum term of life imprisonment. That sentence was suspended as Judge Arend found Mr.
3 Elliott eligible for the Special Sex Offender Sentencing Alternative (SSOSA). Mr. Elliott was
4 sentenced to six months of electric home monitoring. In addition, Mr. Elliott was placed on
5 community custody and ordered to undergo and successfully complete sex offender treatment, to
6 have no contact with minors and not possess or pursue pornographic materials.

7 Mr. Elliott violated the terms and conditions of his SSOSA sentence by having contact with
8 minors and accessing pornographic websites. On May 13, 2005, Mr. Elliott, represented by counsel,
9 appeared before Judge Arend on a violation hearing. Judge Arend revoked the SSOSA sentence and
10 ordered Mr. Elliott committed to DOC to serve his underlying sentence. His incarceration
11 commenced on May, 19, 2005.

12 Mr. Elliott then commenced this lawsuit. The Complaint asserts that Mr. Elliott suffers from
13 cerebral palsy and functions at a 14 year old developmental level. Mr. Elliott complains that the
14 “[c]onditions of DOC are designed for clients without disabilities and were never totally explained
15 to Mr. Elliott. The number of conditions discriminates against persons with disabilities such as Mr.
16 Elliott, as he does not have the memory, coping, or understanding expected of an average adult. His
17 developmental age is fourteen and DOC expects him to comply with twenty-four conditions written
18 for adult offenders.” Mr. Elliott contends the placement of these conditions on Mr. Elliott was
19 discriminatory, that the DOC had a duty to accommodate Mr. Elliott to prevent ultimate failure to
20 comply with the SSOSA sentence, and that conducting violation hearings utilizing these conditions
21 constitutes discrimination against the disabled. Mr. Elliott requests relief in the form of
22 reinstatement of his SSOSA sentence, accommodation of his disability, and an award of monetary
23 damages and attorney’s fees.

24 SUMMARY JUDGMENT STANDARD

25 Summary judgment is appropriate where there is no genuine issue of material fact and the

1 moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party
2 bears the initial burden of demonstrating the absence of a genuine issue of material fact. Celotex
3 Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has met this burden, the
4 opposing party must show that there is a genuine issue of material fact for trial. Matsushita Elec.
5 Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). A dispute as to a material fact is
6 "genuine" if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving
7 party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The opposing party may not rest
8 upon the mere allegations or denials of the moving party's pleading, but must present significant and
9 probative evidence to support its claim. Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d
10 1551, 1558 (9th Cir. 1991). For purposes of this motion, reasonable doubts as to the existence of
11 material facts are resolved against the moving party and inferences are drawn in the light most
12 favorable to the opposing party. Addisu v. Fred Meyer, Inc., 198 F.3d 1130, 1134 (9th Cir. 2000).
13 Summary judgment is mandated where the facts and the law will reasonably support only one
14 conclusion.

15 AMERICANS WITH DISABILITIES ACT

16 Plaintiff brings this claim pursuant to Title II of the Americans with Disabilities Act. Title II
17 of the ADA provides that "no qualified individual with a disability shall, by reason of such disability,
18 be excluded from participation in or be denied the benefits of the services, programs or activities of a
19 public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The broad
20 language of the ADA brings within its scope programs or services provided at jails, prisons, and any
21 other custodial or correctional institution, even though participation in such programs, services, and
22 activities may be mandatory. Pennsylvania Department of Corrections v. Yeskey, 524 U.S. 206, 211
23 (1998). See also, Lee v. City of Los Angeles, 250 F.3d 668, 691 (9th Cir. 2001)(recognizing that
24 incarceration itself is hardly a program or activity under the ADA, but that mental health services and
25 other activities or services undertaken by law enforcement and correctional facilities come within the

1 meaning of the ADA).¹

2 In order to state a claim that a public program or service violated Title II of the ADA, a
3 plaintiff must show: (1) he is a “qualified individual with a disability”; (2) he was either excluded from
4 participation in or denied the benefits of a public entity's services, programs, or activities, or was
5 otherwise discriminated against by the public entity; and (3) such exclusion, denial of benefits, or
6 discrimination was by reason of his disability. McGary v. City of Portland, 386 F.3d 1259, 1265 (9th
7 Cir. 2004); Duvall v. County of Kitsap, 260 F.3d 1124, 1135 (9th Cir. 2001).

8 With respect to the first element, the ADA defines “disability” as: (a) a physical or mental
9 impairment that substantially limits one or more of the major life activities of such individual; (b) a
10 record of such an impairment; or (c) being regarded as having such an impairment. 42 U.S.C. §
11 12102(2); Thompson v. Davis, 295 F.3d 890, 896 (9th Cir. 2002). Although lacking the necessary
12 proof to overcome summary judgment, it will be assumed for the sake of argument that Mr. Elliott
13 has the disability of which he alleges.²

14 The ADA defines discrimination as a public accommodation treating a disabled patron the
15 same as other patrons despite the former's need for a reasonable modification. Fortyune v. Am.
16 Multi-Cinema, Inc., 364 F.3d 1075, 1086 (9th Cir. 2004). The purpose of the ADA's reasonable
17 accommodation requirement is to guard against the facade of “equal treatment” when particular
18 accommodations are necessary to level the playing field. McGary, at 1267. There is no factual

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20 ¹Mr. Elliott asserts that there is no exhaustion requirement for ADA claims. He is incorrect.
21 The Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e(a), requires prisoner litigants to
22 exhaust all administrative remedies before seeking relief under any federal statute. The exhaustion
23 requirement is strictly construed and stringently applied. Porter v. Nussle, 534 U.S. 516, 524 (2002).
24 The PLRA exhaustion requirement applies to a prisoner’s ADA claim. Jones v. Smith, 266 F.3d
25 399, 400 (6th Cir. 2001); Carrasquillo v. New York, 324 F.Supp.2d 428 (S.D. N.Y. 2004). However,
26 DOC has not raised the issue of exhaustion and it will not be considered.

²In opposing summary judgment, Mr. Elliott may not rest upon the mere allegations of his
complaint. There must be evidence to support his claim of disability.

1 evidence that the DOC deprived Mr. Elliott of a service, program or activity. The basic premise to
2 Mr. Elliott's ADA claim is that the DOC failed to accommodate his alleged disability by crafting the
3 conditions of his SSOSA sentence so that he could understand and comply with the conditions. It is
4 not the DOC, however that "crafted" the conditions of the SSOSA sentence. These conditions are
5 contained in Mr. Elliott's Judgement and Sentence entered by Judge Arend and his compliance with
6 them was ordered by the Superior Court.

7 RCW 9.94A.670 sets forth the statutory framework for a convicted sex offender's
8 participation in SSOSA. The statute permits the court to order outpatient sex offender treatment, up
9 to six months of confinement and to order compliance with crime-related prohibitions. See, RCW
10 9.94A.670(4)(b), (5)(a) and (5)(b). Mr. Elliott's Judgement and Sentence imposed crime-related
11 prohibitions, including that he not have contact with minors or pursue pornography. The court
12 imposed these conditions, not DOC. RCW 9.94A.670(10) authorizes the court to revoke the SSOSA
13 sentence if the offender violates the conditions imposed in the sentence. The court conducted the
14 violations hearing and revoked the SSOSA sentence, not the DOC. The loss of the SSOSA sentence
15 was the result of Mr. Elliott's failure to comply with conditions imposed by the court, not the DOC.
16 The allegation that the DOC failed to accommodate his inability to understand or comply with the
17 conditions imposed by his sentence, is a complaint that goes to the imposition of the sentence by the
18 Superior Court.³

19 CONCLUSION

20 For the reasons set forth above, Defendant State of Washington Department of Corrections is
21 entitled to summary judgment of dismissal of Plaintiff's claims in their entirety.


23 ³Judge Arend is provided judicial immunity for her sentencing decisions. See, Mireles v.
24 Waco, 502 U.S. 9 (1991). Suits challenging the validity of the prisoner's continued incarceration lie
25 within the scope of habeas corpus relief. Ramirez v. Galaza, 334 F.3d 850, 856 (9th Cir. 2003).

1 ACCORDINGLY,

2 IT IS ORDERED:

3 Defendant State of Washington Department of Corrections' Motion for Summary Judgment
4 [Dkt. #12] is **GRANTED**, and this case dismissed in its entirety, with prejudice.

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6 DATED this 2ND day of October, 2006.

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10 FRANKLIN D. BURGESS
11 UNITED STATES DISTRICT JUDGE
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